Council of the Municipal District of Ranchland No. 66

Submission to the Alberta Coal Policy Committee

August 19, 2021

The COAL debate began in RANCHLAND.

It is here that the most controversial coal developments were proceeding.

It is with good reason that Ranchland became the heart of this issue.

COUNCIL OF THE MUNICIPAL DISTRICT OF RANCHLAND NO. 66
SUBMISSION TO THE ALBERTA COAL POLICY COMMITTEE

- **Introduction**
- For generations, our residents have sought to protect and preserve the land that have provided their livelihoods. Ranching is the foundation of our residents' way of life, and they have practiced it—and continue to practice it—sustainably.
- Our residents' commitment to our environment is derived from both economic necessity and a deep respect for our land and community. They desire to see their ranching operations pass on to future generations and they recognize that this is only possible if the land upon which those operations are based is sustained.
- These principles form the bedrock of Ranchland's governance. Our Municipal Development Plan (MDP) *Land Use Bylaw* (LUB)sets out that:
  - *The purpose of this Ranchland is to conserve agricultural lands, including grassland, while accommodating land use activities which are compatible with the prevailing agricultural pursuits on privately held lands or leased lands in the white area of the municipality.*

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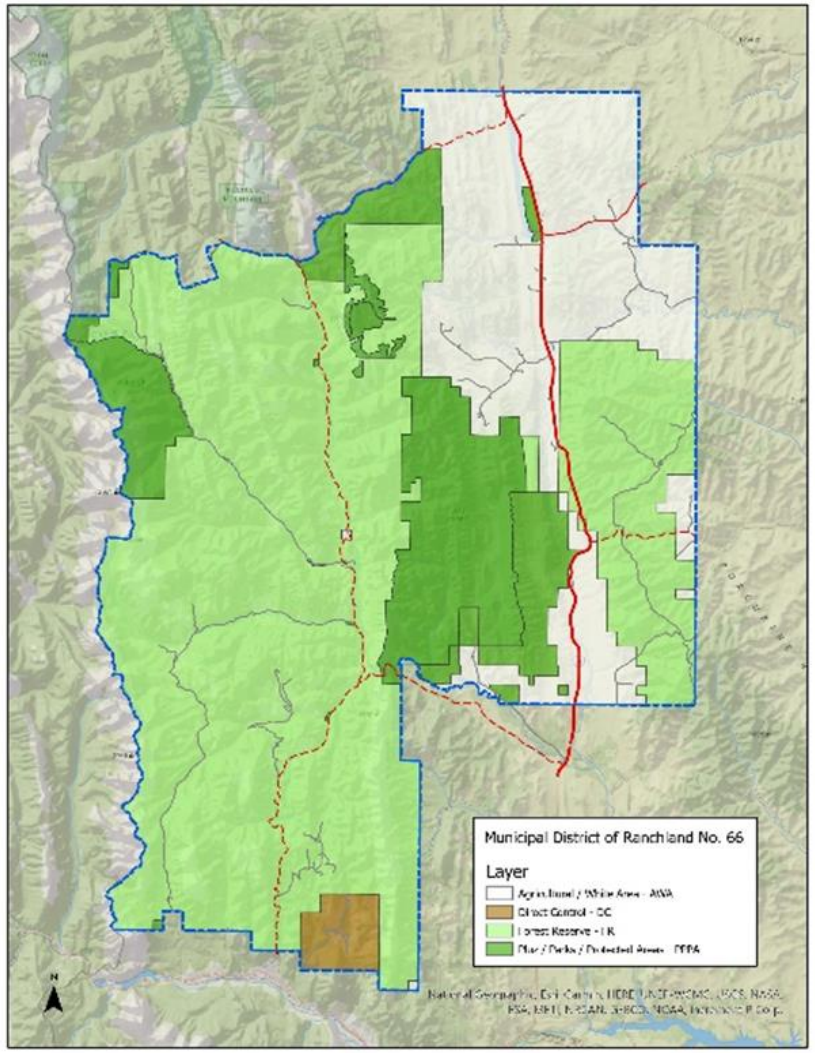

Our intention is to address two broad topics:

A. How should coal development be regulated in Alberta and
B. What should a new coal policy include?

Those topics will be discussed in the following headings:

1. Involving municipalities in green zone coal development proposal decisions;
2. Requiring the Alberta Energy Regulator (the "AER") to broaden the scope of their environmental considerations;
3. Prohibiting coal development in the South Saskatchewan River basin;
4. Removing politics from coal development and the AER;
5. Requiring notice for new approval applications;
6. Accessing regions already subject to coal development;
7. Requiring bonds for exploration approvals; and
8. Taxing coal.

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- **1. <u>INVOLVING MUNICIPALITIES IN COAL DEVELOPMENT</u>**
- Although Ranchland would have filed statements of concern with the AER, we weren't aware of the applications for proposed exploration programs in 2019 or earlier. The first Ranchland became aware was in 2020, after permits to explore had already been granted and in some cases the exploration work was completed.
- ***Proposal***
- Municipalities need to be considered and involved in decisions around coal development and there are precedents to follow. The most relevant precedent is the *Agricultural Operation Practices Act* ("***AOPA***").
- Like coal mining and exploration approvals, in order to receive an approval under *AOPA* parties must apply to an approval officer. That approval officer is required to reject an application if it is inconsistent with a municipal development plan:
- Approval officers appointed under *AOPA* are also required to consider a municipality's land use bylaw. If an application does not comply with a municipal development plan, the approval officer "must deny the application".
- Applying this approach to the AER is consistent with the *Responsible Energy Development Act* ("***REDA***") and the *Coal Conservation Act* ("***CCA***"). Like under *AOPA*, the AER has a two-step appeal process. Further, like the AER, the NRCB has the same powers under section 619 of the *MGA*:
- Unlike the AER, however, the NRCB "<u>must have regard to</u>" a municipal development plan. It cannot disregard that municipal development plan like the AER did in CEP200001 and CEP200002. The AER should have the same requirements imposed upon it as the NRCB is subject to.

- **2. <u>REQUIRING THE AER TO CONSIDER ENVIRONMENTAL ISSUES (1)</u>**
- In the statements of concern filed in both CEP 200001 and CEP200002, Ranchland raised two concerns that were not considered by the AER: 1) the approvals pertained to NO consideration was given to the critical habitat designation for or the presence of either the Westslope cutthroat trout or the bull trout, nor was any consideration given to cumulative effects. That the approvals were granted without consideration for species at risk, the other approvals or other land uses is difficult to reconcile. <u>For our residents to trust the AER and the regulatory processes, the AER cannot ignore these factors.</u>

- ***Proposal***
- Ranchland proposes that, like the requirement to consider a municipal development permit, the AER be required to consider cumulative effects and species at risk. That requirement ought to be legislated under both *REDA* and the *CCA*.
- Section 3 of the *Responsible Energy Development Act General Regulation* sets out the factors the AER is required to consider in determining an application for an approval:
    - (a) the social and economic effects of the energy resource activity,
    - (b) the effects of the energy resource activity on the environment, and
    - (c) the impacts on a landowner as a result of the use of the land on which the energy resource activity is or will be located.

- **2. REQUIRING THE AER TO CONSIDER ENVIRONMENTAL ISSUES (2)**
- Ranchland submits that two items ought to be added to section 3 of the regulation and that those two items relate directly to approvals for coal development.
- First, the AER shall consider whether an activity will impact a species listed under the *Species at Risk Act* and any critical habitat related to that species. Although the AER is required to consider the "environment", the AER's ability to ignore species at risk when issuing CEP200001 and CEP200002 demonstrates that it requires more direction.
- Second, the AER shall consider the cumulative impacts of the approval in conjunction with current and future land uses, including recreational, economic or development uses or other approvals either applied for or granted. The linear footprint of resource development, temporary or otherwise, shall not be excluded from contributing to the habitat and species threshold limits in any cumulative effects studies, recreation planning, or land planning while the disturbance exists.
- Requiring the AER to consider these two factors will curtail the AER's ability to ignore them.

- **3. PROHIBITING COAL DEVELOPMENT IN THE SOUTH SASKATCHEWAN RIVER BASIN**
- In the early 1970s, the GOA began a four-year period of consultation and study on development in the Eastern Slopes. The consultations were conducted by the Environment Conservation Authority (the "**Authority**") and were done to identify the priorities and concerns of Albertans for the region.
- To accomplish its mandate, the Authority began public consultations in 1973 to identify the priorities and concerns of Albertans for the region. The consultations were titled *Land Use and Development in the Eastern Slopes* (the "**Hearings").**
- ***Proposal***
- Any new coal policy should prohibit any coal related activities in the headwaters of the entire South Saskatchewan River Basin. The South Saskatchewan River basin is defined in Schedule "C" to the South Saskatchewan Regional Plan.
- The reason that coal activities should be prohibited in the South Saskatchewan River basin is threefold:
    a. Lack of Water Resources;
    b. Conflict with current uses; and
    c. Biodiversity and environmental concerns.
- Open pit coal mines do not belong in the South Saskatchewan River Basin. This is neither the place, nor the time for this type of development. There is no ability to reclaim the resulting stain upon our landscape.

- **4. REMOVING POLITICS FROM COAL DEVELOPMENT AND THE ALBERTA ENERGY REGULATOR (1)**
- Rescinding the 1976 Coal Policy was inherently a decision driven by the vested interests of coal mining proponents. Much can be said about the suspicious timing of the rescission—the Friday of a long weekend during the pandemic shutdown—and much can be said about who was and was not consulted.

- ***Proposal***
- ***a) Adopting the Coal Policy as Legislation***
- In order to remove politics, the next coal policy needs to be legally binding. In this regard, Ranchland supports and repeats the submissions to the Coal Policy Committee authored by Professor Nigel Banks, *A New Coal Policy for Alberta in the Age of Net Zero: Questions of Implementation*.

- Ranchland proposes that any changes to the new coal policy should undergo the same process as changes to a regional plan adopted under the *Alberta Land Stewardship Act*:

    - Before a regional plan is made or amended, the Stewardship Minister must

        - (a) ensure that appropriate public consultation with respect to the proposed regional plan or amendment has been carried out, and present a report of the findings of such consultation to the Executive Council, and

        - (b) lay before the Legislative Assembly the proposed regional plan or amendment. Requiring consultation and approval by the Legislature before implementing changes to the new coal policy will remove political interference with a new coal policy.

- **4. REMOVING POLITICS FROM COAL DEVELOPMENT AND THE ALBERTA ENERGY REGULATOR (2)**
  - ***b) Section 67 of REDA***
  - Section 67 of *REDA* grants the Minister of Energy the ability to interfere in the AER's operations:
  - We know that section 67 was used by Alberta Energy to direct the AER to rescind the 1976 Coal Policy.
  - If the new coal policy is not legally binding, then section 67 of *REDA* needs to be repealed.
  - The Minister's ability to direct and influence the AER using section 67 or otherwise cannot continue if Albertans are to trust the regulatory process.

5. REQUIRING NOTICE FOR NEW APPROVAL APPLICATIONS (1)

Every municipality in Alberta is mandated and encouraged to collaborate and work together with neighboring municipalities, both urban and rural, to avoid duplication and conflict when considering developments. These plans are often contentious and require considerable resources and time to complete and update. The process, however, is valuable

It is not unreasonable, for GOA authorities to be required to at least inform the municipalities of development proposals, including proposals that involve crown land, like the forestry or “green zone” within a municipality’s boundary or close proximity to a boundary.

- Ranchland found out about the coal exploration program when ranchers with grazing dispositions started questioning the MD as to why there were new roads being built all over the ridges within their dispositions. There was no consultation, no notification and no window for expression of concerns for disposition holders, municipalities or concerned Albertans.
- This process of same day approvals for coal exploration on sensitive lands within Ranchland happened with at least three different coal exploration company programs. Trusting a regulatory process requires knowledge that the process is happening. Albertans will only trust the regulatory process if directly affected parties and municipalities are provided with prior notice of approval applications.

5. REQUIRING NOTICE FOR NEW APPROVAL APPLICATIONS (2)

Proposal

Ranchland proposes a notice requirement similar to an Alberta Utility Commission application. In brief, a notice requirement for an overhead transmission line requires:

- Public notification to occupants, residents and landowners within 800 meters measured from the edge of the proposed right-of-way for the transmission line and/or the edge of the proposed substation site boundary. and:
- Personal consultation with occupants, residents and landowners on or directly adjacent to the proposed right-of-way for the transmission line and/or proposed substation site location.

Notice of an open pit coal mine or of coal exploration should be no different than notice of a new transmission line. Arguably, the impact of an open pit coal mine is more substantial than the impact of a transmission line.

Ranchland proposes that notice of coal development or exploration be provided to all residents, occupants, landowners, municipalities and disposition holders within 15 km of the proposed activity by the AER (instead of the proponent or applicant). This requirement would be in addition to the current requirement of public notice.

6. ACCESS AFTER EXPLORATION

By inserting cut lines, access trails and roadways into what was previously dense forest, recreational and other users are now able to access large portions of Ranchland for the first time. Although access to public land is a short-term benefit to recreationalists, it brings added pressure to the environment and disposition holders. The potential for increased conflict with disposition holders is a concern for Ranchland.

Proposal

The Coal Policy Committee ought to recommend further mandatory land use planning after coal development. There are two mechanisms by which further land use planning can occur:

The new Coal Policy could include consideration for post coal recreation and other access, such as limiting OHV and other vehicle use on cut lines; or

The Coal Policy Committee may recommend the establishment of additional sub regional plans under the *South Saskatchewan Regional Plan* and the *Alberta Land Stewardship Act* to deal with this issue.

7. REQUIRING BONDS FOR EXPLORATION APPROVALS

- The *Coal Conservation Rules* require project proponents to post a performance bond and as far as Ranchland is aware, no performance bond was required for CEP190006, CEP200001 or CEP200002. The level of reclamation required is also unspecified. Much of the reclamation required is discretionary upon the AER.

Proposal

- Ranchland submits that reclamation ought to be properly defined in the *CCA* and *REDA*. It is only through properly defining reclamation that the AER will know the appropriate bond amount.

- Ranchland further submits that the performance bond be raised to reflect actual costs related to the proposed activity. Under the current bond structure, coal proponents would only be required to post $2,500 to reclaim a hectare of land in Ranchland. Given the pristine nature of our jurisdiction, $2,500 is insufficient to properly reclaim land disturbed by coal mining. The cost of any shortfall would thereby be borne by the GOA and/or Ranchland.

- A performance bond should also be a condition of obtaining an exploration approval. Exploration requires significant disruption to the landscape, including linear disturbances, watercourse crossing damage, disruption to other disposition holders and users, introduction to invasive species and weeds, expansion into habitat areas leading to access management challenges.

8. TAXING COAL (1)

- There appear to be two sources from which GOA receives coal royalties:
- 1) royalties obtained pursuant to lease agreements between lessees and the GOA and
- 2) royalties obtained through the *Coal Royalty Regulation*.
- A significant amount of coal development occurs in minerals that are held by private entities—they are not owned by the Province of Alberta. In those freehold minerals, Alberta is unable to obtain royalties through lease agreements. Significantly, private ownership is dominant in the coal producing regions of Southwestern Alberta, as indicated by the above map.
- In brief, the *Coal Royalty Regulation* applies a 1% royalty to bituminous coal and a $2/tonne royalty to subbituminous coal. This royalty would apply regardless of whether the Province of Alberta is the lessor. The predominant form of coal mining in the Eastern Slopes is bituminous coal.

Proposal

- Given the volume of coal development on privately owned mineral rights, the 1% royalty scheme is insignificant to properly compensate the Province of Alberta for the environmental harm attributable to coal development.

8. TAXING COAL (1)

- ***Proposal (continued)***

Ranchland proposes to the GOA to significantly raise the royalty rate on bituminous coal to properly compensate Albertans for the environmental harm attributed to coal development. Ranchland suggests that a commission be struck to recommend a coal royalty that properly considers the negative impact of coal development on the environment and society.

- ***a) Freely Held Mineral Rights***

Ranchland notes the considerable amount of freely held mineral rights within the Eastern Slopes generally and its jurisdiction specifically. The only method to completely ensure protection from coal development is for the Province of Alberta to hold mineral rights.

Ranchland does not have a proposal to require this; it simply raises the issue as a point of concern for the Government of Alberta to consider.

CONCLUSION

The CPC mandate is set out in its Terms of Reference. Ranchland's view is that the committee's mandate is broadly defined and includes areas related to the environment and water resources.

This CPC's jurisdiction is to provide a report to the Minister of Energy on "matters under the Minister's administration".

The Minister's administration includes the AER and the AER has primary jurisdiction over environment and water regulation.

It is for this reason that Ranchland submits that the Coal Policy Committee may hear and consider matters relating to the environment and water.

These submissions represent the opinions of Ranchland and its residents.

They are provided to the CPC so that it can assist the GOA with developing "a twenty-first century natural resource development policy".

Each of these submissions are logical. They are supported by science and history and our hope is that the CPC and the Minister of Energy will take them seriously, failing which Albertans will continue to view the AER and regulatory processes with significant skepticism.

QUESTIONS